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THE COMMUNISM OF A DISCRIMINATING INCOME-TAX.

As a ready and elastic method of raising revenue, the theory of an income-tax always commands a certain degree of popular favor ; and that, under the pressure of financial necessity, governments are inclined to make such a tax a part of their fiscal policy, the experience of recent years abundantly demonstrates. Income-taxes are at present levied in Great Britain, Austria, Germany, and Italy. They were enacted in the United States by the Federal Government in 1863, as one of a series of measures which a condition of war was held to justify, and continued in force with various modifications until 1872.

All modern systems of income taxation have recognized the principle of discriminating in favor of persons in the receipt of comparatively small incomes ; and have provided, as a fundamental feature of their policy, that all incomes below a certain sum (usually a small amount) should be exempted from assessment. Thus, for example, the existing income-tax of Great Britain commences with its assessment on incomes of £150 (\$750) and upward, and exempts all incomes of a smaller amount. In Germany, the income exemption being very small, nearly the whole population of the country, male and female, are made subject to the provisions of the income-tax. All incomes subject to taxation in any European country are invariably assessed at one and the same rate. In the United States, on the other hand, the income-tax, as first enacted in 1863, exempted \$600 annual income for each person, together with whatever was paid annually for rent and repairs of residence. *Five* per cent. per annum was then levied on all incomes above \$600 and not in excess of \$5,000 ; *seven* per cent. on all incomes above \$5,000 and not in excess of \$10,000 ; and *ten* per cent. on all incomes in excess of \$10,000. In the income-tax of the United States as it existed at one

period, there was, therefore, recognized the principle, not only of exempting incomes below a certain amount from all taxation, which amount, in order to keep up an appearance of equity, was allowed to be equally deducted from all larger incomes ; but, in addition, the further one—not recognized in any other existing income-tax—of graduating the assessment by increasing the rate or percentage of taxation on the larger incomes. This system was accordingly exceptional and peculiar ; but as on first presentation and superficial examination it seems to embody an ingenious and equitable method of equalizing the burdens of the state between the rich and the poor, and also finds special favor with persons of a communistic turn of mind, by whom, with the discriminations largely increased, it is frequently recommended for reënactment, it is proposed in the interests of political and economic science to here subject it to analysis, with a view to determine whether any income-tax, which discriminates in any degree, is likely, as is often claimed, to constitute the one perfect form of taxation of the future. And, at the outset, attention is asked to the following proposition :

ANY INCOME-TAX WHICH PERMITS OF ANY EXEMPTION WHATEVER
IS A GRADUATED INCOME-TAX.

Any form of income-tax which permits of exemption is graduated, not by the rate of the tax, but by the amount of the exemption, which is equally effective in producing discrimination and inequality, because all incomes below an arbitrary line are entirely exempt from the tax. Again, in treating of an income-tax, it should be always borne in mind that, when a Government *taxes the income of property*, it in reality taxes the property from which the income is derived. In England and on the Continent of Europe land is taxed on its yearly revenue or income value, and these taxes are always considered as land-taxes. Alexander Hamilton, in discussing the taxation of incomes derived directly from property, used this language : “What, in fact, is property but a fiction, without the beneficial use of it ? In many instances, indeed, the income is the property itself.” (Hamilton’s “Works,” vol. iii., p. 523.)

If the law exempts from taxation income from property to the extent of \$2,000, it in effect exempts property of the capital value of \$50,000 from taxation ; for at present four per cent. is about the average profit of money, land, or other property, over and above all

charges and taxes ; and, at that rate of profit, \$2,000 will be the annual income value of \$50,000. Furthermore, if we assume that the annual income of realized property is *four* per cent., that the exemption to each person is \$2,000, and that the rate of the tax is *five* per cent., then a person who owns only \$50,000 in value of property will pay no tax ; he who owns \$60,000 in capital value of like property will pay on its entire income $1\frac{2}{3}$ per cent., or five per cent. on the income of the capital value in excess of \$50,000 ; he who owns \$100,000 of property will pay on its income $2\frac{1}{2}$ per cent. ; while he who owns \$250,000 of property will pay on its income four per cent., and thus the tax will be, in effect, graduated in rate and continually approximating, but never quite reaching a rate of *five* per cent.—the property paying income being assumed to be always of the same and competing class. In the case of the recent income-tax of the United States, the number of persons who paid this tax, when the exemption (in 1868) was \$1,000, was 259,385 ; and, when the amount of exemption was raised to \$2,000, the number of taxable persons was reduced to 116,000, and subsequently ran down to 71,000 out of a total population of about 40,000,000. Experience, therefore, demonstrates that an exemption in the United States of \$2,000 of income, accredited to each individual owner of property, will exempt *more than nine tenths of the entire property* of this country and *more than ninety-nine hundredths* of the property-owners from this tax. Under such circumstances, it is a misnomer to call such an exaction taxation. It is unmasked confiscation, and a burlesque on taxation. Nor can an income-tax which exempts \$2,000 of income be defended under any rule or doctrine of *de minimis*, or rejection of fractions, for the property and income exempted are infinitely greater in the aggregate than the property and income of the same class made subject to the tax. Under this form of an income-tax there can be no equality between taxed producers and untaxed producers, and more especially as the untaxed producers will be the most numerous, and the greatest producers in quantity as a body. No man is a free man the fruits of whose industry and capital are subject to surcharged (overburdened) exactions to an unlimited degree, and from which his immediate competitors are entirely exempt. Equality of taxation of all persons and property brought into open competition under like circumstances is necessary, to produce equality of condition for all, in all production, and in all the enjoyments of life, liberty, and property. Any government, whatever name it may assume, is a despotism,

and commits acts of flagrant spoliation, if it grants exemptions or exacts a greater or less rate of tax from one man than from another man on account of his owning or having in his possession more or less of the same class of property which is the subject of the tax. M. Thiers, in his work on the "Rights of Property," thus forcibly condemns confiscation under the name and form of a graduated income-tax: "Proportionality," he says, "is a principle, but progression is a hateful despotism. . . . To exact a tenth from one, a fifth from another, and a third from another is pure despotism—it is robbery." If it were proposed to levy a tax of 5 per cent. on annual incomes below \$2,000 in amount, and to exempt all incomes above that sum, the unequal and discriminating character of the exemption would be at once apparent; and yet an income-tax exempting all incomes below \$2,000 is equally unjust and discriminating. In either case the exemption can not be founded or defended on any sound principles of free constitutional government. It is a simple manifestation of tyrannical power, under whatever form of government it may be enforced.

AN EXEMPTION FROM TAXATION FOR A PRIVATE (NOT PUBLIC) PURPOSE AND TAXATION FOR PRIVATE PURPOSES ALIKE VIOLATE THE RIGHTS OF PROPERTY AND OF EQUAL COMPETITION.

"An exemption is freedom from a burden or service to which others are liable;" but an exemption for a public purpose or a valid consideration is not an exemption except in name, for the valid and full consideration, or public purpose promoted, is received in lieu of the tax. Nor is an exemption from taxation a discriminating burden on those who pay the tax, provided the person or institution benefited by the exemption is a pauper or a public charitable institution; for then there is a consideration for the exemption, and it is justified as a matter of economy, and to prevent an expensive circuitry of action in levying the tax with the sole purpose of giving it back to the intended beneficiary of the Government. The avoidance of this unnecessary circuitry of action is not an injury but a gain to those who pay the tax. It can not, however, be seriously claimed that a man having \$50,000 in value of productive capital, and receiving from it \$2,000 of annual income, is entitled to receive support from the Government as a public pauper. Our governments, State or national, can not impose taxes for the purpose of fostering any particular *private* business or enter-

prise. ("Loan Association *vs.* Topeka," 20 Wallace, p. 655.) Taxes can only be imposed for public purposes, and, when they are imposed for any other purpose, the Government acts the part of a highwayman, and takes forcibly the property of A and gives it to B. In fact, there is the same reason why all exemptions of like property from taxation should be based solely on the ground of a public purpose in the exemption as that all taxes collected should be for a public purpose. A tax upon the property of A and an exemption of the property of B, of the same competing class, will enhance the value of B's property and diminish the value of A's property to the extent of the tax. A, under the circumstances, will not be able to sell on terms of equality his *taxed* property in competition with the *untaxed* property of B; and this is equivalent to taking a certain amount of property or value from A and giving it to B. An exemption of any property, or income of the same competing class of property, made subject to taxation, is a form of charity or donation to the favored person who receives the advantages of the exemption. It can not, moreover, be claimed that a public purpose will be promoted by collecting a given tax exclusively from persons, who each own property in excess of \$50,000, or in excess of the annual value of \$2,000. It may, however, be conceded that private property, dedicated to a public use, like railroads, bridges, or ferry-boats, may in the discretion of the legislative power be exempted to promote a public purpose, and to prevent the expense of the collection of a tax which would be immediately given back to the parties paying it. The power to exempt obviously involves the power to make a donation of the tax to the exempted persons; and, if the power of exempting property of the class taxed exists at all, it is also clear that it exists without any limitation. If Congress has the power to levy five per cent. on incomes above \$2,000, and to exempt all less incomes, it can make the discriminating rate 100 per cent. of the income, and thus confiscate, under the name of taxation, all property in any one man's hands in excess of the yearly value of \$2,000, or of any other sum.

THE TAX-ADVANCER USUALLY NOT THE PRIMARY TAX-PAYER.

Taxes, in all conceivable or known systems of taxation, are not at first paid but advanced to the Government as a kind of forced loan, with an implied obligation on the part of the Government to give the person making the advance the power and ability to collect

the tax from consumption and expense in the price of things consumed, where all taxes finally fall. It is impracticable for the Government to tax property in its infinitesimal forms of consumption at the time of consumption. This would require an assessor and tax-collector at the elbow of every person all the time, and hence the Government proceeds against property *in invitam* (or by force) where found at a given time, or when produced or imported, and compels the owner or possessor to advance the tax to the State. But, if the Government fails to give the power and means of reimbursing the tax in the price, and then submits the owner to the open competition of similar untaxed property, the forced loan becomes repudiated, and the tax-advancer is despoiled of his property without compensation. *Taxes advanced uniformly on all property of the same competing class* are circuitous means of reaching all expense and consumption, and will be apportioned and adjusted in the regulation of prices by the natural laws of open competition. Taxes will be thus advanced by those who hold the property in block, and will be primarily paid by those who consume or use the taxed property, and who in turn, controlled by the natural law of competition, will add or diffuse a part of the tax in the cost of their salable productions, and thus all expense and consumption will finally bear the entire burden. Taxes uniformly advanced on all like competing property will always tend to equate themselves, and will never be a special burden to those who originally made the advances to the Government. Such persons will sell the tax in the price, rent, or use of the taxed property. But, on the other hand, if the immediate competitors of those who have advanced taxes are untaxed on their competing property or income, then the tax-advancer will be unable to sell or collect the taxes which he has been by force compelled to advance, for his untaxed competitors—especially if they are numerous and their untaxed property large in amount—will undersell him; and the forced loan will thus be entirely repudiated. Hence the act of the English Parliament in the fourth year of the reign of William and Mary, which imposed double rates of taxation on the income of Catholics; hence any income-tax which exempts any income derived from property of the competing class made subject to the tax, or any tax imposed by any arbitrary rule of residence or non-residence, nativity, color, or religious persuasion; any tax on contracts after they are made and not provided for in the contract; or upon business or property beyond the jurisdiction of the taxing power; or any form of tax which compels a person

to advance taxes in gross to the Government without some appropriate legislation to protect and enable such tax-advancers to collect the tax from those who use and consume—should be regarded not as taxation, but as spoliation and an invasion of the rights of property.

DIRECT AND INDIRECT TAXES.

There is a marked distinction, founded on sound philosophy, between a direct and an indirect tax. An indirect tax, whoever may first advance it, is paid voluntarily and primarily by the consumer of the taxed article ; but a direct tax, on the contrary, always has in it an element of compulsion, not necessarily on the person who advances the tax in block, but on the person who is compelled to use or consume the taxed property or its product. A tax upon land *compels* all persons to pay a direct tax, for no one can live except upon land or its products, and a tax upon land is therefore a direct tax. (*A land-tax has been conceded by the United States Supreme Court to be a direct tax, "Hylton vs. The United States," 3 Dallas, p. 171.*)

A tax upon a few articles, like whisky, tobacco, licenses upon certain classes of business, can always be avoided as a primary tax, or can be paid at discretion ; but there is nothing voluntary in a tax upon *all* real and personal property or their income. Human beings can not subsist without some form of personal property, and therefore a tax upon *all* personal property or its income is of necessity compulsory and not voluntary. Any general assessment of personal property on its income must also, as well as assessments on real estate, constitute a direct tax. (*See Alexander Hamilton's brief in the carriage case, Hamilton's "Works," vol. vii., p. 848.*) There is nothing compulsory or unequal in an ordinary license-tax. If the license is high, no one is compelled by law, or the laws of competition, to engage in the business, and but few persons will engage in it ; and thus the average profits of the taxed business, by the regular laws of competition, will finally reach the average profits of other like employments or investments. But an income-tax is always compulsory, for it is imposed on income from *all* sources. Some form of property is a necessity, and therefore a tax upon all forms of property or its income is a *direct* or unavoidable tax, and not a voluntary tax.

Now, the Constitution of the United States requires that all direct taxes shall be uniform throughout the United States ; and

territorial uniformity of indirect taxation must imply and involve absolute uniformity and equality of these taxes on like values and quantities. But, under the operation of natural laws, larger quantities will be owned and produced by one person in one State than in another. Colorado and Texas have large herds of cattle ; Illinois has large corn-fields and large distilleries ; Louisiana large sugar-plantations, and New England large factories, owned by single persons. Two States may, and in some instances do, have equal per capita wealth in the aggregate, but in the one the wealth may be made up of capital invested in numerous small industries adapted to its soil and climate ; while in the other, owing to different natural conditions, there may be great concentrations of capital in a few hands and in a few industries. Thus, in the case of our late income-tax, seven States, in the year 1869—Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Illinois, and California—possessed forty per cent. of the assessed property of the United States, and had just about forty per cent. also of our population. But, at the same time, these same seven States paid full three fourths of the entire income-tax levied by the Federal Government upon the people of the whole country ; or, to put it differently, the States which had sixty per cent. of the wealth and population of the country paid only about one fourth of the income-tax. A violation, therefore, of the rule of uniformity in taxes on incomes from the same class of property, in the hands of a single person, becomes a warfare on the natural resources and natural abilities of some States, and a warfare upon property beyond a certain amount in one man's hands. Thus, for example, two farms, wherever situated, owned by two persons and producing a profit of \$2,000, will produce the same competition, in the sales of products, as one farm, owned by one man, producing \$4,000 of profit. The profits of the two farms and two persons, under an exemption of \$2,000, would, however, be free from all taxation ; while the profit of the competing farm, producing the same income as the two other farms, would be subject to a burden on its income of two and a half per cent. if the farm happens to be in the hands of a single owner. The aggregate of the value of the property is the same in both cases ; but the incidence of taxation is made dependent upon the circumstance of making the assessment upon two persons rather than one. This is not equality of burden on competing property, or on immediate competitors ; but, as M. Thiers says, "it is robbery."

A GRADUATED INCOME-TAX, TO THE EXTENT OF ITS DISCRIMINATION, IS AN ACT OF CONFISCATION.

The Federal Constitution further provides that private property shall not be taken for public use except upon compensation. It is conceded that this is a limitation on the power of Congress. There must be a line between the taking of private property for public use and taxation ; but how can that line be drawn except by the rule that taxation means uniformity of burden on competing avocations and competing property ? A recent decision of the Supreme Court of New Jersey seems to be direct upon the unconstitutionality of discriminating burdens on the same class of persons or property. Thus the New Jersey Court said : " A tax upon the person or property of A, B, and C, individually, whether designated by name, or in any other way, which is in excess of an equal apportionment among the persons or property of the class of persons or kind of property subject to the taxation, is, to the extent of such excess, the taking of private property for a public use without compensation. The process is one of confiscation and not of taxation." ("Township Committee of Reading," 36 N. J., p. 66, 1872 ; see also "Cooley's Constitutional Limitations," §§ 490-515 ; "Durach's Appeals ; 62 Pennsylvania State Reports.")

It only remains, to complete this argument, to consider what is meant by property of the same class. The answer to this is, obviously, property which immediately or directly competes in open market. The force of competition is not dependent upon the quantity owned or produced by few or many persons, but upon the aggregate quantity of similar property offered in market, whether produced or owned by few or many persons.

It may also be pertinent in conclusion to say that two thousand dollars is a larger exemption than has ever been allowed in any income-tax system in any country except the United States ; where, owing to comparative equality of fortunes, the exemption, if any exemption is to be permitted, should be extremely low. Wherever the line of exemption may be drawn, an act of discrimination is instituted against all those who own property producing income in excess of the line of the exemption. In England, where business, to a greater extent than in any other country, is conducted by large capitalists, where the soil is owned by a comparatively few persons, and where the entire property of the nation is greatly concentrated, an exemption of seven hundred and fifty dollars, under the income-

tax there allowed to each person, is of much less practical importance than a similar exemption would be in the United States, where it would remove a large portion of all incomes derived from property from the burden of the tax. In France, owing to the very great and minute subdivisions of the ownership of the soil, a small exemption would also take from the income list a large proportion of the owners of real estate in that country. Leroy Beaulieu, indeed, estimates that an exemption of twenty-five hundred francs (five hundred dollars) would exempt from three fourths to four fifths of the entire income of France ; and accordingly, when in 1848 the enactment of an income-tax was debated in France, it was proposed to put the exemption as low as two hundred and fifty francs, or fifty dollars. Any judicious system of taxation in any country will have reference to its natural products ; its extent of territory ; its contiguity to competing nations ; the density or sparseness of its population, the habits of the people, and the comparative equality of their fortunes. The United States can conveniently, economically, and uniformly collect its revenues from a few domestic articles, like whisky and tobacco, manufactured in large amounts at one place by one person or firm ; and on imports, like sugars, tea, and coffee, introduced into the country, to a great extent, in large vessels and in large quantities at a few ports. With the limitation of our revenues to such few sources, economy of assessment and collection will be insured, unnecessary inquisition and loss of time—a form of unproductive taxation—will be avoided, and only a comparatively few persons will feel the direct hand of the tax-gatherer ; while all will cheerfully pay taxes in regulated prices on their expense and consumption, where, by the operation of natural laws, all taxation must finally rest.

But any attempt to collect an income-tax, which is equal and has none of the features of spoliation or confiscation, from our sparse population, extending from Florida to Alaska, is entirely unpractical ; and, unless the rate is excessive, the taxes received would not pay the cost of assessment and collection, while, as before shown, the rights of property, the great republican principle of equality before the law, and constitutional law itself, will alike preclude any exemption of any income derived from like property. It is a vital and constitutional question, demanding absolute equality, that is here involved and at stake. Any exemption whatever, small or great, except to the absolutely indigent, is purely arbitrary ; and the principle, once allowed, may obviously be car-

ried to any extent. Any exemption of any portion of the same class of property or incomes is an act of charity which every American ought to reject upon principle and with scorn, except under circumstances of great want and destitution. Equality and manhood, therefore, demand and require uniformity of burden in whatever is the subject of taxation.

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